

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

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NOV 12 2002

Michael N. Milby, Clerk

MARK NEWBY, et al.

Plaintiffs,

v.

ENRON CORPORATION, et al.,

Defendants.

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Civil Action No. H-01-3624 ✓  
And Consolidated Cases

ABBEY NATIONAL TREASURY  
SERVICES plc

Plaintiff,

v.

CREDIT SUISSE FIRST BOSTON  
CORPORATION, et al.,

Defendants.

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Civil Action No. H-02-3869

**ABBEY NATIONAL TREASURY  
SERVICE PLC'S OBJECTION TO AND REQUEST FOR  
CLARIFICATION OF CONSOLIDATION ORDER**

Consistent with the timetable otherwise followed by the Court for addressing procedural matters herein, Plaintiff Abbey National Treasury Services plc ("Abbey National") respectfully requests clarification of the Order entered by this Court, dated November 5, 2002 (Dkt. #1121), consolidating Civil Action No. H-02-3869 brought by Abbey National against Credit Suisse First Boston Corporation, et al. (the "Abbey National action") with *Newby v. Enron Corp.*, Civil Action No. H-01-3624. In addition, in order to preserve its right to contest the terms of the consolidation of the Abbey National action with other pending and/or future actions, Abbey National files this objection to the Court's November 5, 2002 Order.

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Abbey National also objects to defendants Credit Suisse First Boston Corporation's and J.P. Morgan Securities Inc.'s Notice of Consolidation, and in the Alternative, Motion to Consolidate (Dkt. #1117) and defendants Credit Suisse First Boston Corporation's and J.P. Morgan Securities Inc.'s First Supplemental Notice of Consolidation, and in the Alternative, Supplemental Motion to Consolidate (Dkt. #1124) on the same grounds that Abbey National objects to the Court's November 5, 2002 Order.

### **Introduction**

As set forth below, while the November 5, 2002 Order appears to consolidate Abbey National's case with certain pending and future cases, it is unclear to what extent Abbey National will be permitted by that Order to litigate its case apart from these other cases, and to what extent and upon what common issues Abbey National will be bound by rulings and decisions in other related cases. Only after these issues have been clarified will Abbey National be able to make a final determination of what specific objections, if any, it may have to the Court's November 5, 2002 Order.

### **Background**

Abbey National commenced this action by filing its Complaint (Dkt. #1) on October 11, 2002. On October 29, 2002, Abbey National filed an Amended Complaint (Dkt. #5).

By means of its Complaint and Amended Complaint, Abbey National asserts claims against defendants Credit Suisse First Boston Corporation, Credit Suisse Group, Credit Suisse First Boston, Credit Suisse First Boston (USA), Inc., Credit Suisse First Boston, Inc., Credit Suisse First Boston (Europe) Limited, Deutsche Banc Alex. Brown Inc., Deutsche Bank AG, Deutsche Bank AG London, J.P. Morgan Chase & Co., J.P. Morgan Securities, Inc., J.P. Morgan Securities Holding Inc., Chase Securities Inc., J. P. Morgan Investment Corporation, J.P.

Morgan Securities Ltd., Bank of America Corporation, Banc of America Securities LLC, Bank of America Securities Limited, Canadian Imperial Bank of Commerce, CIBC Inc., CIBC World Markets Corp., CIBC World Markets plc, Dresdner Kleinwort Wasserstein, Inc., Dresdner Kleinwort Wasserstein Securities LLC, Dresdner Kleinwort Wasserstein Services LLC, Dresdner Bank AG, Dresdner Bank AG London Branch, ABN AMRO Incorporated, ABN AMRO Securities (USA) Inc., ABN AMRO Bank N.V., Arthur Andersen LLP, Andersen Worldwide, SC, Marlin Water Trust, Marlin Water Capital Corp., and John and Jane Does #1 through #50.<sup>1</sup>

Abbey National states causes of action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder, Texas state law and common law, as well as under sections 12(a)(2) and 15 of the Securities Act of 1933, arising out of the sale of Marlin Water Trust II €515,000,000 6.19% Senior Secured Notes, due July 15, 2003, and \$475,000,000 6.31% Senior Secured Notes, due July 15, 2003 issued by two Enron Corporation Special Purpose Entities -- Marlin Water Trust II and Marlin Water Capital Corp. II.

Abbey National purchased €55,000,000 of the 6.19% Marlin Water Senior Secured Notes and \$50,000,000 of the 6.31% Marlin Water Senior Secured Notes, both of which ultimately were secured by Enron stock. As a result of Enron's collapse, Abbey National lost over \$85,000,000.

On October 30, 2002, defendants Credit Suisse First Boston Corporation and J.P. Morgan Securities, Inc. filed a Notice of Consolidation and, in the Alternative, Motion to Consolidate, which sought consolidation of the Abbey National action with *Newby v. Enron Corp., et al.* pursuant to Local Rule 7.6 and the Court's December 12, 2001 Order of Consolidation (Dkt. #17). On November 6, 2002, defendants Credit Suisse First Boston

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<sup>1</sup> Abbey National simultaneously filed the same Complaint and Amended Complaint in the District Court for the Southern District of New York with the intent to serve the Complaint and Amended Complaint only against those defendants who might have a personal jurisdiction defense in the Southern District of Texas.

Corporation and J.P. Morgan Securities, Inc. filed a First Supplemental Notice of Consolidation, and in the Alternative, First Supplemental Motion to Consolidate addressed to Abbey National's amended complaint, which was filed on October 29, 2001.

### **Relief Requested**

Abbey National objects to the Court's Order, dated November 5, 2002, consolidating the Abbey National action with the *Newby* case, and respectfully seeks clarification of the Court's November 5, 2002 Order to insure that Abbey National has an accurate understanding of the purpose and effect of the Court's November 5, 2002 Order. Defendants Credit Suisse First Boston Corporation's and J.P. Morgan Securities Inc.'s original and supplemental requests for consolidation do not make clear either the purposes for which defendants seek consolidation of the Abbey National action with the *Newby* case, nor the limitations, if any, upon Abbey National in pursuing its claims as a result of such consolidation.

With respect to the Court's November 5, 2002 Order, Abbey National respectfully requests clarification as to the following:

(1) that although the Abbey National action is consolidated with the *Newby* case for some purposes, the Abbey National action is not merged with the *Newby* case or any other action that has been consolidated or will be consolidated with the *Newby* case; rather, the Abbey National action maintains its separate identity, and its parties and pleadings remain distinct from those in the *Newby* case and any other action consolidated with the *Newby* case; *see McKenzie v. United States*, 678 F.2d 571, 574 (5th Cir. 1982) ("consolidation does not cause one civil action to emerge from two; the actions do not lose their separate identity; the parties to one action do not become parties to the other) (citations omitted); *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 135 F.2d 750, 752 (11th Cir. 1998) ("consolidation of cases under Fed. R. Civ. P. 42 does not strip the cases of their individual identities");

(2) that the Abbey National action is consolidated with the *Newby* case solely for the purpose of resolving common issues of fact and law;

(3) the nature and identity of the common issues of fact and law;

(4) whether the consolidation is for purposes of pre-trial motions, pre-trial discovery, and/or trial;

(5) that the consolidation of the Abbey National action with the *Newby* case pertains to all defendants in the Abbey National action even though some of the defendants in the Abbey National action are not defendants in the *Newby* case;

(6) that the Abbey National action is stayed in its entirety pending the Court's rulings on the pending motions to dismiss in the *Newby* case;

(7) that once the pending motions to dismiss in the *Newby* case are decided, Abbey National will have the opportunity to move to reinstate its complaint on the Court's active docket and/or move to amend Abbey National's complaint if the Court's decisions with respect to the pending motions to dismiss in the *Newby* case or discovery indicate that modification is appropriate;

(8) that after reinstatement and/or amendment of Abbey National's complaint, the defendants in the Abbey National action shall be obligated to file timely responsive pleadings to Abbey National's complaint, and the Abbey National action shall proceed pursuant to a scheduling order issued by the Court;

(9) that Abbey National will be given the opportunity to pursue its claims on an individual basis, rather, than have its claims subsumed into any class or subclass created or approved by counsel or the Court; and

(10) that Abbey National will have the opportunity to participate in all discovery in the consolidated action and to conduct any additional discovery that it requires based on the distinct nature of the claims that it asserts in its complaint.

### **Conclusion**

Abbey National respectfully requests that, consistent with the timetable otherwise followed by the Court for addressing procedural issues herein, the Court clarify its Order of Consolidation, dated November 5, 2002, and provide Abbey National with an opportunity to detail its specific objections, if any, to the Court's Order of Consolidation once it has been clarified.

Dated: November 12, 2002

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Respectfully submitted,



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ATTORNEY-IN-CHARGE FOR  
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SERVICES plc

### Certificate of Service

I hereby certify that on this 12<sup>th</sup> day of November, 2002, a true and correct copy of the above and foregoing pleading was forwarded by hand-delivery, certified mail, return receipt requested, and/or facsimile to the following counsel for defendants in *Abbey National Treasury Services plc v. Credit Suisse First Boston Corporation, et al.*:

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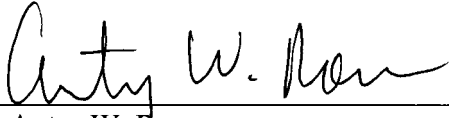
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Service of the foregoing pleading will be served electronically via the [www.esl3624.com](http://www.esl3624.com) web site on counsel of record in *Newby, et al. v. Enron, et al.*, as soon as Abbey National is permitted to make postings on the web site, which is currently being sought. Counsel for Abbey National will promptly update the Court concerning the status of service.

  
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Autry W. Ross